

June 8, 1982

APPENDIX A

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1982-82

6 Div. 507

Larry Wayne Box

v.

State

Appeal from Jefferson Circuit Court

ON RETURN TO REMAND

CLARK, RETIRED CIRCUIT JUDGE

In accordance with previous order remanding this case to the trial court for clarification of the question whether defendant was adjudged guilty under both counts of the indictment and, if not, whether he was adjudged guilty of possession of cocaine, as charged in the first count, or, on the other hand, whether he was adjudge guilty of possession of marijuana, as charged in the second count, the return of the trial court shows by its amendment to the judgment nunc pro

tunc that defendant was not found guilty under both counts but that he was found guilty under County One only, which charged possession of cocaine. It thereby become unnecessary for us to consider the issue raised by appellant pertaining exclusively to the second count, which charged defendant with the possession of marijuana.

The single issue as to the first count of the indictment is thus stated in appellant's brief:

"Was the seizure of what later proved to be cocaine from the automobile of defendant valid?"

As hereinafter explained, we conclude that it was.

A large part of the evidence consisted of the testimony of Sergeant Jim Brooks of the Narcotics Division of the Jefferson County Sheriff's Department. He testified that on November 11, 1979, he received information from a Center Point confidential informant that narcotics activity involving defendant and another person was occurring at one of three houses located at 2729 Center Point Road in Jefferson County. The three houses were located close together; the occupants used the same address and a common driveway from the highway to the curtilage of each house. On November

11 and 12, 1979, Sergeant Brooks and others closely watched the houses, but they saw no activity at that time. On November 13 he conducted surveillance again. He testified that about 10:50 p.m., 10:45, or 10:50, p.m., the defendant returned and he and Danny Bice loaded some more sacks, "and all into the car," and they locked up the house, locking the front door, and they left the scene. The witness stated that surveillance was maintained at the same "observation point" until daylight of the morning of November 14; he resumed it about noon, with the understanding that another officer was in the process of obtaining, or had obtained, a search warrant for the house. The witness further testified that he then maintained surveillance of the area at intervals, including a large part of the night of November 16-17 when the arrest of Box occurred. At that time, the brown paper bag was seized inside which the plastic bags containing cocaine were discovered.

Appellant cites numerous authorities on the general subject of Search and Seizure, but fails, in our opinion, to show an unreasonable search and seizure as to the cocaine that was found in the

automobile. We do not agree with the statement of appellant, "Based upon the foregoing authorities, it is submitted that the arresting officer had no reasonable ground to believe that Box was at the time of his arrest committing a crime or was otherwise engaged in any activity which could have given rise to probable cause to effect an arrest or search." On the contrary, we think that the officers at the time had much more information and knowledge than was required to give them probable cause for believing Box was at the time, and had been for several days, engaged in violation of the Alabama Uniform Controlled Substances Act, and they were justified in making an arrest of him at the time. Nor are we in agreement with either of the apparent conclusions of appellant as found in each of the two following sentences in his brief:

"The plastic bags, which proved later to contain cocaine, were in a brown paper bag, and were not visible until the bag was opened. Further, the report shows that this paper bag was concealed in the purse of the girl passenger in the car."

Although it may not be conclusive that the "plastic bags" were "visible" to the officers as they looked into the automobile, it is conclusive that they were

visible to Sgt. Brooks at the time defendant picked them up and took them to the automobile where they were placed in the brown paper bag. As to the second sentence, instead of the paper bag being concealed in the purse, the testimony of Sergeant Brooks was as follows:

"Q. In fact, it will be your testimony that you saw that?

"A. That is what I thought I saw. I thought that it was on the purse, you know.

"Q. I understand. Are you saying that you are not sure now and that it could have been concealed in the purse?

"A. Well, the brown paper bag, a portion of it was in the purse. Part of it was on the purse.

"From my field of vision, from my line of sight, from where I first appeared to see."

The paper sack that contained the plastic bags that contained white substance that proved to be cocaine was partly in an open purse and in plain view of the officers at the time they arrested Mr. Box and took possession of the automobile. They knew that only a few moments before he had manual possession of the sack and its contents. In taking the Defendant and the automobile into their custody, it was their

right and duty to take possession of the sack and its contents. There was no violation of appellant's right to security against unreasonable searches and seziures, and we find no support for such insistance in any of the authorities relied upon by appellant.

We find no error in the record prejudicial to defendant. The judgment of the trial court should be affirmed.

The foregoing opinion was prepared by Retired Circuit Judge Leight M. Clark, serving as a judge of this Court under the provisions of § 6.]0 of the Judicial Article (Constitutional Amendment No. 328); his opinion is hereby adopted as that of the Court. The judgment of the trial court is hereby

AFFIRMED.

All the Judges concur

Appendix B

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

September 17, 1982

RE: 81-865

Ex Parte: Larry Wayne Box

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS

(Re: Larry Wayne Box	vs.	State of Alabama)
Appellant		Appellee

You are hereby notified that the following indicated
action was taken in the above cause by the Supreme
Court today:

_____ Appeal docketed. Future correspondence should
refer to the above number.

_____ Court Reporter granted additional time to file
reporter's transcript to and including

_____ Clerk/Register granted additional time to file
clerk's record/record on appeal to and including

_____ Appell _____ granted 7 additional days to file
briefs to and including

_____ Appellant(s) granted 7 additional days to file
reply briefs to and including

_____ Record on Appeal file

_____ Appendix Filed

_____ Submitted on Briefs

XXXXXX Petition for Writ of Certiorari denied. No opinion.

ADAMS, J. -- TORBERT, C.J., FAULKNER, ALMON AND
EMBRY, JJ., CONCUR.

_____ Application for rehearing overruled. No opinion
written on rehearing.

_____ Permission to file amicus curiae briefs granted

/s/ Dorothy F. Norwood
Acting Clerk, Supreme Court
of Alabama